



U.S. Department of Justice

Washington, D.C. 20530

OCT 22 2004

Stephen H. Oleskey, Esq.
Wilmer Cutler Pickering
Hale and Dorr LLP
60 State Street
Boston, MA 02109

Dear Mr. Oleskey:

Your Freedom of Information Act and/or Privacy Act (FOIA/PA) request was received by this office which serves as the receipt and referral unit for FOIA/PA requests addressed to the Department of Justice (DOJ). Federal agencies are required to respond to a FOIA request within twenty business days. This period does not begin until the request is actually received by the component within the DOJ that maintains the records sought.

The Immigration and Naturalization Service was transferred to the Department of Homeland Security on March 1, 2003. The new name is the Bureau of Citizenship and Immigration Services (BCIS). The BCIS can be reached at the address below:

FOIA/PA
Bureau of Citizenship and Immigration Services
2nd Floor, Ullico Building
Department of Homeland Security
425 I Street, NW
Washington, DC 20536
(202) 514-3278

Sincerely,

A handwritten signature in black ink that reads "Ronald L. Deacon".

Ronald L. Deacon, Director
Facilities and Administrative
Service Staff
Justice Management Division

Enclosure
Returned request

FOIA

WILMER CUTLER PICKERING
HALE AND DORR LLP

September 28, 2004

Stephen H. Oleskey

Patricia Harris, Management Analyst
FOIA/PA Mail Referral Unit
Department of Justice
Room 114, LOC
Washington, D.C. 20530-0001

60 STATE STREET
BOSTON, MA 02109
+1 617 526 6544
+1 617 526 5000 fax
stephen.oleskey@wilmerhale.com

Re: Freedom of Information Act Request

Dear Ms. Harris:

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and corresponding regulations. This request is submitted on behalf of the following individuals (collectively, "Requesters") who are presently detained at Guantanamo Bay Naval Base, Cuba ("Guantanamo"): Lakhdar Boumediene, Mohammed Nechle, Mustafa Ait Idir, Saber Lahmar, Hadj Boudella, and Bensayah Belkacem.

I. Records Sought

Requesters seek all records in any way relating to, pertaining to, or mentioning any or all of them and the detention of any or all of them by any and all persons or entities, including all persons acting on behalf of the United States. Without limiting any of the above, Requesters specifically seek all records concerning the Government's custody and interrogations of them. Requests for "records concerning Requesters" will include any records in any form, including electronic media, that in any way concern, relate to, pertain to, refer to, or mention any or all of the Requesters. Accordingly, Requesters seek the following records:

- 1) Correspondence and records, including, but not limited to, notes, e-mail, and telephone records of communications between the federal government and the government of Bosnia and Herzegovina or any person or organization in Bosnia and Herzegovina concerning Requesters;
- 2) Records concerning the transfer of custody of Requesters from Bosnia and Herzegovina to the United States in January 2002;
- 3) Records concerning the transport of Requesters from Bosnia and Herzegovina to Guantanamo, including, but not limited to, records of the transport itinerary, duration of the flight, and measures taken with respect to physically securing Requesters during transport;
- 4) Records of communications with, interrogations and interviews of (referred to collectively as "interrogations") Requesters while in the custody of Bosnia and Herzegovina, including, without limitation:

BALTIMORE BERLIN BOSTON BRUSSELS LONDON MUNICH
NEW YORK NORTHERN VIRGINIA OXFORD PRINCETON WALTHAM WASHINGTON

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- a) Any statements made by Requesters;
 - b) Any transcriptions of the interrogations;
 - c) Any photographs, video, audio, digital or other contemporaneous recordings of the interrogations;
 - d) Records concerning the conditions to which Requesters were subject during the interrogations;
 - e) Records concerning the mental or physical condition of Requesters during or after the interrogations;
 - f) Records containing, or in any way relating or referring to, information provided by or derived from information obtained from Requesters;
- 5) Records concerning access to Requesters granted or denied to foreign governments or non-governmental organizations, including, but not limited to, records relating to a visit from representatives of the government of Bosnia and Herzegovina to Guantanamo in or about July 2004;
- 6) Records of interrogations of Requesters while in the custody of the United States, including, without limitation:
- a) Any statements made by Requesters;
 - b) Any transcriptions of the interrogations;
 - c) Any photographs, video, audio, digital or other contemporaneous recordings of the interrogations;
 - d) Any records of the conditions to which Requesters were subjected during the interrogations;
 - e) Records concerning the mental or physical condition of Requesters during or after the interrogations;
 - f) Records concerning any interaction the Joint Intelligence Group at Guantanamo had with Requesters;
 - g) Records containing, or in any way relating or referring to, information provided by or derived from Requesters;
- 7) Records concerning Requesters that contain information supplied by military police, the Joint Detention Operations Group, or other persons who monitor detainees in Guantanamo;

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- 8) Records containing information supplied by intelligence officers, interrogators at Guantanamo, or the Joint Intelligence Group concerning Requesters;
- 9) Records concerning Requesters that contain statements made by other Guantanamo detainees or terrorist suspects;
- 10) Medical records and information concerning Requesters, including, without limitation:
 - a) Records and information concerning the physical condition of Requesters;
 - b) Records of any medical conditions experienced by Requesters;
 - c) Records of any medical and/or psychiatric treatments provided, requested, or denied while in U.S. custody;
 - d) Records of the mental health or psychological conditions of Requesters;
 - e) Records concerning the identities of every person who has or did have any responsibility to observe, record, address, cure, modulate, monitor, or in any way reflect upon the physical or mental health conditions of Requesters;
 - f) Records concerning any procedures, instructions, orders, or guidance provided to medical personnel with respect to their duties at Guantanamo;
- 11) Records concerning any physical or psychological conditions to which Requesters were subject while in U.S. custody, including, without limitation:
 - a) Records concerning physical or psychological abuses of Requesters;
 - b) Records concerning physical or psychological conditions used to elicit cooperation from Requesters, including, but not limited to: use of shackles; solitary confinement; use of psychoactive drugs; modulation of temperature; withholding of food or water; exposure to weather elements; use of straight jackets; use of dogs to intimidate and/or coerce or attack; threatening the well-being of Requesters' families or otherwise intimating that their families would be harmed; cavity searches; forcing Requesters to hold specific body positions for extended periods of time; sleep deprivation; sensory deprivation or sensory overload, *e.g.*, by exposure to very bright lights at night, by exposure to loud music or noise; withholding or damaging the Koran; withholding communications to or from Requesters' families and/or representatives of the government of Bosnia and Herzegovina.
 - c) Records concerning physical or psychological conditions used to punish Requesters, including, but not limited to: use of shackles; solitary confinement; use of psychoactive drugs; modulation of temperature; withholding of food or water; exposure to weather elements; use of straight jackets; use of dogs to intimidate and/or coerce or attack;

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- threatening the well-being of Requesters' families or otherwise intimating that their families would be harmed; cavity searches; forcing Requesters to hold specific body positions for extended periods of time; sleep deprivation; sensory deprivation or sensory overload, *e.g.*, by exposure to very bright lights at night, by exposure to loud music or noise; withholding or damaging the Koran; withholding communications to or from Requesters' families and/or representatives of the government of Bosnia and Herzegovina;
- d) Records concerning treatment of Requesters by interrogators, including, but not limited to, any plans, instructions, orders, guidance or procedures governing interrogations, and any records of any person objecting to or refusing to comply with such instructions;
- 12) Records concerning any contact, communication, or interaction between the International Committee for the Red Cross ("Red Cross"), or any other non-governmental organization, and Requesters, including, but not limited to, records related to decisions to grant or deny the Red Cross access to any Requester;
 - 13) Records concerning any contact, communication or interaction between any military personnel or special forces unit and Requesters, including, without limitation:
 - a) Records concerning any contact or interaction between the Extreme Reaction Force ("ERF") or the Immediate Response Force ("IRF") in Guantanamo and Requesters;
 - b) Records concerning any disciplinary action or punishment against Requesters;
 - 14) Records relating to policies, procedures or guidelines governing conditions of detention, methods of interrogation, or treatment of detainees at Guantanamo;
 - 15) Records relating to investigations, inquiries, observations, inspections or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 14, above, including, but not limited to, records indicating the existence of such investigations, inquiries, observations, inspections or disciplinary proceedings;
 - 16) Records concerning any investigation of or disciplinary action taken against any guard, military police, intelligence officer, military personnel or civilian in connection with Requesters;
 - 17) Records of any investigations, inquiries, observations, or inspections relating to conditions of detention or interrogations at Guantanamo, including, but not limited to:
 - a) Records concerning a visit by Admiral Church to Guantanamo on or about May 6, 2004;
 - b) Records prepared by Admiral Church concerning his visit to Guantanamo on or about May 6, 2004;

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- c) Records concerning any observations of detention at Guantanamo by the Red Cross or any other non-governmental organization.

2. Requesters Are Entitled to Expedited Processing

Expedited processing of a FOIA request is warranted when it involves “the loss of substantial due process rights.” 28 C.F.R. § 16.5(d)(iii). Here, the denial of Requesters’ substantial due process rights is not only imminent, but also present and on-going. Requesters’ have been detained by the U.S. Military in Guantanamo for more than two years without access to a lawyer or any legitimate legal process. Requesters’ families and the public have not been provided with information concerning Requesters’ medical health or treatment, and, given recent accounts of abuses of detainees by the military’s Extreme Reaction Force, there is reason to believe that Requesters are threatened with unlawful punishments amounting to torture. *See, e.g.,* Shafia Rasul, Asif Iqbal and Rhuhel Ahmed, *Composite Statement: Detention in Afghanistan and Guantanamo Bay*, ¶ 300 (available at www.ccr-ny.org) (former detainees describing abusive conditions at Guantanamo for Algerian-Bosnian detainees); AP, *Three Britons allege abuses under U.S. custody at Guantanamo*, USA Today.com, August 4, 2004; David Rose and Gaby Hinsliff, *US Guards 'Filmed Beatings' at Terror Camp*, Observer.Guardian.uk.com, May 16, 2004; *Bosnian Citizens Imprisoned at Guantanamo Complain About Health Problems*, BBC Monitoring International Reports, August 3, 2004; Department of Justice, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations*, March 6, 2003 (rationalizing that compliance with international treaties and U.S. laws prohibiting torture could be overlooked because of legal technicalities and national security needs).

* * * *

It is our understanding that much of the requested information is maintained together in a manner readily accessible to the Department, because Secretary Gordon England has stated that the Department repeatedly reviews the files of each Guantanamo detainee in order to justify their continued detention and because the Department has an on-going obligation to monitor the health of persons held in U.S. custody.¹ For these reasons, both the health and interrogation records concerning each Requester should be readily accessible to the Department.

FOIA implementing regulations provide that if some parts of records containing the requested information are exempt from mandatory disclosure, then non-exempt materials shall be disclosed after the exempt material has been deleted. *See* 5 U.S.C. § 552(b). Therefore, if you determine some portion of a record that is responsive to this request is exempt, please provide a copy of the remainder of the record. Additionally, if you determine that some or all of the requested records are exempt from disclosure, please provide a list or index of the records withheld, the exemption invoked, an estimation of the volume of records denied, and the reasons why a discretionary

¹ Secretary England, speaking to the BBC on August 5, 2004, said that the status of each detainee had been reviewed eight times before.

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release of the records would not be appropriate under DOJ implementing regulations and the agency's FOIA policy. *See* 28 C.F.R. § 16.6(c).

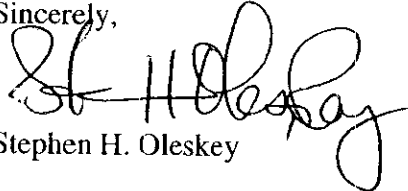
This request has also been sent to the Department of Homeland Security and the Department of Defense. Requesters are willing reimburse up to \$5,000 of search and duplication fees incurred, in aggregate, by responding agencies related to this request.

Thank you for your consideration of this request. Please direct all future responses to my attention at:

Stephen H. Oleskey, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
Telephone (617) 526-6544
Facsimile (617) 526-5000

If you need to reach someone by telephone about this request, you also may contact my associate, Lynne Soutter, at (617) 526-6447.

Sincerely,



Stephen H. Oleskey

Attorney for Lakhdar Boumediene, Mohammed Nechle, Mustafa Ait Idir, Saber Lahmar, Hadj Boudella, and Bensayah Belkacem.

DECLARATION OF STEPHEN H. OLESKEY
IN SUPPORT OF REQUEST FOR EXPEDITED PROCESSING

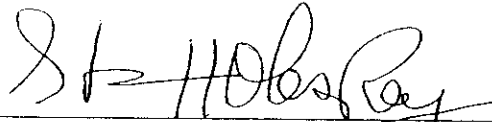
I, Stephen H. Oleskey, declare pursuant to 5 U.S.C. § 552 and 32 C.F.R. §

286.4(d)(3)(iv):

1. I am Senior Partner at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts, 02109. I submit this declaration in support of the Freedom of Information Act Request filed today on behalf of Requesters, Lakhdar Boumediene, Mohammed Nechle, Mustafa Ait Idir, Saber Lahmar, Hadj Boudella, and Bensayah Belkacem.
2. I currently represent Requesters in a *habeas corpus* case filed in federal district court, wherein the continued detention of Requesters in Guantanamo Bay Naval Base, Cuba ("Guantanamo") is challenged as unlawful and unconstitutional.
3. The United States Military has denied and continues to deny Requesters' substantial due process rights. Requesters' have been detained by the U.S. Military in Guantanamo for more than two years without access to a lawyer or any legitimate legal process.
4. Requesters' due process rights continue to be denied by their ongoing detention and are additionally threatened by imminent Combatant Status Review Tribunals, to which they are subject and for which they are not provided access to counsel.
5. Requesters' families and the public have not been provided with information concerning Requesters' medical health or treatment during their detention (*see Bosnian Citizens Imprisoned at Guantanamo Complain About Health Problems*, BBC Monitoring International Reports, August 3, 2004).
6. Former detainees have recounted that Requesters were subject to abusive conditions in Guantanamo (*see* Shafia Rasul, Asif Iqbal and Rhuhel Ahmed, *Composite Statement: Detention in Afghanistan and Guantanamo Bay*, ¶ 300 (available at www.ccr-ny.org)), and the media has reported abuses by the military's Extreme Reaction Force (*see* AP, *Three Britons allege abuses under U.S. custody at Guantanamo*, USA Today.com, August 4, 2004; David Rose and Gaby Hinsliff, *US Guards 'Filmed Beatings' at Terror Camp*, Observer.Guardian.uk.com, May 16, 2004). These facts indicate that Requesters may have been threatened with unlawful punishments amounting to torture.

I hereby declare that the foregoing is true and correct to the best of my knowledge.

Executed at Boston, Massachusetts on September 28, 2004.

A handwritten signature in black ink, appearing to read "St-H Oleskey", written over a horizontal line.

Stephen H. Oleskey
Wilmer Cutler Pickering Hale and Dorr LLP
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Boston, MA 02109
(617) 526-6000